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7 Attorneys for Plaintiff  
United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA )

11 Plaintiff, )

12 v. )

13 )  
14 JORGE ORTEGA-ROCHA (1), )  
15 ALBERTO MINOR-OLVERA (2), )

16 Defendants. )  
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Criminal Case No. 07CR3054-IEG

HEARING DATE: January 7, 2008  
TIME: 2:00 p.m.

UNITED STATES' MOTIONS FOR:  
(1) RECIPROCAL DISCOVERY; AND  
(2) FINGERPRINT EXEMPLARS.

TOGETHER WITH MEMORANDUM OF  
POINTS AND AUTHORITIES

COMES NOW the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Christopher M. Alexander, Assistant United States Attorney, and hereby files its Motions for Reciprocal Discovery and Fingerprint Exemplars. These Motions are based upon the files and records of the case together with the attached memorandum of points and authorities.

**I**

**STATEMENT OF THE CASE**

On November 9, 2007, a Indictment was returned in the Southern District of California charging Defendants Jorge Ortega-Rocha and Alberto Minor-Olvera ("Defendants") with bringing in three undocumented aliens for financial gain in violation of 8 U.S.C. § 1324(a)(2)(B)(ii) and 18 U.S.C. § 2, and transportation of three undocumented aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II). On November 13, 2007, the Court arraigned Defendant on the Indictment and entered a not guilty plea. The Court held a motion setting date on November 19, 2007. A motion hearing was scheduled for January 7, 2008.

**II**

**THE UNITED STATES' MOTION FOR  
RECIPROCAL DISCOVERY SHOULD BE GRANTED**

The United States has provided discovery. As of this date, Defendant has produced no reciprocal discovery. The United States requests that Defendant comply with Rule 16(b) of the Federal Rules of Criminal Procedure, as well as Rule 26.2 which requires the production of prior statements of all witnesses, except for those of Defendant. Defendant has not provided the United States with any documents or statements. Accordingly, the United States will object at trial and ask this Court to suppress any evidence at trial which has not been provided to the United States.

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1 **III**

2 **THE UNITED STATES' MOTION FOR**  
 3 **FINGERPRINT EXEMPLARS SHOULD BE GRANTED**

4 Part of the United States' burden of proof in this case is to satisfy the jury that Defendant were  
 5 involved in the smuggling incident (Defendant Ortega as the driver and Defendant Minor as the  
 6 passenger). To make that showing, the United States may call an expert in fingerprint identification to  
 7 match each Defendant's fingerprints to relevant evidence. The most efficient and conclusive manner  
 8 of establishing this information is to permit the expert witness himself to take a set of each Defendant's  
 9 fingerprints for comparison.

10 A defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S.  
 11 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate a  
 12 defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394,  
 13 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968); see also United States v. St.  
 14 Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987). The United States, therefore, requests that this Court  
 15 order that each Defendant make himself available for fingerprinting by the United States.

16 **IV**

17 **CONCLUSION**

18 For the foregoing reasons, the United States requests that the Court grant its motions for  
 19 reciprocal discovery and fingerprint exemplars.

20 DATED: December 18, 2007

Respectfully submitted,

21 KAREN P. HEWITT  
 22 United States Attorney

23 *s/Christopher M. Alexander*

24 CHRISTOPHER M. ALEXANADER  
 25 Assistant United States Attorney  
 Attorneys for Plaintiff  
 United States of America  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Criminal Case No. 07CR3054-IEG

Plaintiff,

v.

JORGE ORTEGA-ROCHA (1),  
ALBERTO MINOR-OLVERA (2),

Defendant.

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, CHRISTOPHER ALEXANDER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States' Motions for (1) reciprocal discovery, together with memorandum of points and authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Joseph McMullen, Esq.  
Atty for Defendant Ortega-Rocha

2. Mark Chambers, Esq.  
Atty for Defendant Minor-Olvera

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2007.

*s/Christopher M. Alexander*

CHRISTOPHER M. ALEXANDER